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FLOOR DEBATE

March 21, 2005 LB 492

creates a presumption that the grain physically deposited is deposited for storage and not for sale, unless it is deposited by notice...or, unless it is deposited by a priced scale ticket or signed contract passing title to the warehouse upon deposit. The committee amendment clarifies that this presumption is for the purpose of the Nebraska Grain Warehouse Act only. The amendment was requested by the bankers, Nebraska Bankers Association, and it's to be consistent with the remainder of the bill. It just clarifies that to make sure that it only applies to Nebraska Grain Warehouse Act. With that, I will close on the committee amendment. Ask your support, please.

PRESIDENT SHEEHY: Thank you, Senator Kremer. The floor is now open for discussion on AM0326. Seeing no one wishing to speak, Senator Kremer, you're recognized to close. Senator Kremer waives closing. We'll move back to AM0326. Shall it be adopted? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk.

CLERK: 29 ayes, 0 nays, Mr. President, on adoption of committee amendments.

PRESIDENT SHEEHY: Committee amendment AM0326 is adopted. We'll now move back to LB 492, for discussion from the floor. Senator Beutler, you're recognized.

SENATOR BEUTLER: Members of the Legislature. Senator Kremer, pursuant to our earlier discussion, I wanted to get on the record a statement of intent with respect to your intent on Sections 1 and 4 of the bill. As you know, Section 1 of the bill indicates, in its new language, that in a replevin action, under the state Warehouse Act, notice shall be given as provided in Section 4 of this act. Section 4 then goes on to describe a notice that must be given within a certain number of days when any creditor of a warehouse commences a judicial proceeding. And my question with respect to your intent is basically this: If the creditor fails to give the Section 4 notice, is that a fatal flaw in the replevin action? In other words, is it what we call jurisdictional in the law as far as process is concerned? And, for example, a lawyer in opposition of the replevin action might come in and get a summary judgment on the